

STATE OF MICHIGAN
COURT OF APPEALS

EDITH H. MEAD,

Plaintiff-Appellee,

v

RODGER N. MEAD,

Defendant-Appellant.

UNPUBLISHED

February 5, 2004

No. 240872

Genesee Circuit Court

LC No. 90-165638-DM

Before: Fitzgerald, P.J., and Neff and White, JJ.

FITZGERALD, P.J. (*dissenting*).

I respectfully dissent.

The property division of a consent judgment “is a contract and is to be construed and applied as such.” *Gramer v Gramer*, 207 Mich App 123, 125; 523 NW2d 861 (1994). If the parties to a contract dispute its terms, the “court must determine what the parties’ agreement is and enforce it.” *G&A Inc v Nahra*, 204 Mich App 329, 330; 514 NW2d 255 (1994). “If the contract language is clear and unambiguous, then its meaning is a question of law for the court to decide,” *Conagra, Inc v Farmers State Bank*, 237 Mich App 109, 132; 602 NW2d 390 (1999), and extrinsic evidence cannot be considered. *UAW-GM Human Resource Ctr v KSL Recreation Corp*, 228 Mich App 486, 491; 579 NW2d 411 (1998). If the language of a contract “is reasonably susceptible to more than one interpretation,” it is ambiguous, *Rinke v Automotive Moulding Co*, 226 Mich App 432, 435; 573 NW2d 344 (1997), and parol evidence is admissible to explain the ambiguity. *Meagher v Wayne State Univ*, 222 Mich App 700, 722; 565 NW2d 401 (1997). “Ambiguities in a consent judgment of divorce may be interpreted and clarified, so long as this does not change the substantive rights of the parties.” *Pierce v Pierce*, 166 Mich App 579, 581; 420 NW2d 855 (1988).

The parties did not specify in the judgment that plaintiff was to receive a percentage of defendant’s pension according to its value as of the date of retirement and did not make any provision for cost of living increases. The failure to include such provisions is an indication that they were not intended. *Quade v Quade*, 238 Mich App 222; 604 NW2d 778 (1999); *Roth v Roth*, 201 Mich App 563; 506 NW2d 900 (1993). Given the fact that plaintiff never objected to the order for the first nine years after it was entered, I would conclude that the trial court erred in rewriting the QDRO and would reverse.

/s/ E. Thomas Fitzgerald